



1/27/05 5578-58206-01

PATENT
Attorney Reference No. 5578-58206-01

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of: Mark W. Publicover, et al.

Application No. 09/800,273

Filed: March 5, 2001

Confirmation No. 3749

For: TRAMPOLINE OR THE LIKE WITH
ENCLOSURE

Examiner: Jerome W. Donnelly

Art Unit: 3764

Attorney Reference No. 5578-58206-01

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP AF, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on the date shown below.

Attorney
for Applicant(s)

Date Mailed January 28, 2005

MAIL STOP AF
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

**CONDITIONAL NOTICE OF APPEAL FROM THE EXAMINER
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants hereby appeal to the Board from the decision of Examiner Jerome W. Donnelly mailed July 28, 2004, finally rejecting claims 65-67.

This notice of appeal is conditional because it most likely will become untimely. It is believed that the Office action of July 28, 2004 was designated "final" in error. And, in an Amendment after Final Action and Request to Withdraw Finality filed on January 27, 2005, Applicants have requested withdrawal of the designation of finality.

Upon withdrawal of the designation of finality, appeal will be untimely because the requirements of 37 CFR §41.31(a) will not be satisfied. No claim will have been "twice rejected" or "finally rejected."

Applicants are filing this notice of appeal only to avoid an inadvertent abandonment of the application in the unlikely event that the designation of finality is not withdrawn.

A check in the amount of \$250.00 is enclosed for the fee (37 C.F.R. § 1.17 (b)) for filing this Conditional Notice of Appeal.

The fee for an extension of time was already paid with the Amendment after Final Action and Request to Withdraw Finality that was filed on January 27, 2005.

The Commissioner is hereby authorized to charge any additional fees that may be required in connection with the filing of this Notice of Appeal and any extension of time, or credit any overpayment, to Deposit Account No. 02-4550. A copy of this Notice of Appeal is enclosed.

Upon withdrawal of the designation of finality, \$250.00 should be refunded to Deposit Account No. 02-4550 because this Conditional Notice of Appeal will be untimely.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By


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Docketing